IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Crl.Rev.Pet.No. 1224 of 2005()

CRA.643/2003 of ADDL.SESSIONS COURT, (ADHOC), ERNAKULAM
CC.1850/1998 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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REVN. PETITIONER:

RAJENDRA PRASAD, 45 YEARS,
C.NO. 3182, CENTRAL JAIL,
VIYYOOR.

BY ADV. SRI.K.K.RAJEEV

RESPONDENTS:

STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 1224 of 2005

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Dated: 04-10-2007

ORDER

Revision Petitioner who was the accused in C.C. 1850 of 1998 on the file of the J.F.C.M.-II, Aluva challenges the conviction entered and the sentence passed against him concurrently by the courts below for offences punishable under Secs. 461, 454 and 380 I.P.C.

2. The case of the prosecution is as follows:

On 24-12-1997 at about 12 noon the accused committed house breaking into house bearing door No. 48/1105 of Cochin Corporation and committed theft of a pair of studs and a golden locket altogether valued at Rs. 3150/-.

3. On the side of the prosecution 4 witnesses were examined as P.W.s 1 to 4 and 3 documents were marked as Ext.P1 to P3. The prosecution also got marked two material objects a pair of ear studs and an addil).

4. The accused denied the incriminating circumstances appearing against him in the evidence for the prosecution put to him by the trial Court and maintained his innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate , after trial, as per judgment dated 15-2-2003 found the revision petitioner guilty of the offences and sentenced him to rigorous imprisonment for two years for each of the offences with a direction that the substantive sentences shall run concurrently. Even though the

revision petitioner preferred an appeal before the Addl. Sessions Court (Adhoc-I), Ernakulam as Criminal (Jail) Appeal 643/2003, the learned Sessions Judge as per judgment dated 29-1-2005 dismissed the appeal confirming the conviction entered and the sentence passed against the petitioner. Hence this Revision.

6. The learned counsel appearing for the revision petitioner made the following submissions in support of the revision:-

P.W.1 from whose house the gold ornaments were allegedly stollen has not lodged any complaint before the police. When confronted with the material objects he confessed that he cannot say or whether those material objects are the properties stollen from his house since they are old ornaments. P.W.2. the jewellery owner from whom MOs 1 and 2 were seized in pursuance of Exts. P1 (a) confession statement of the accused has confessed that there are no entries in his bill book and register to show that he had purchased the gold ornaments from the accused. P.W.4 who is the salesman in the jewellery shop of P.W.2 would say that he made available to the police the material objects as requested by the police. P.W.1 does not have any bill to indicate his ownership over the gold ornaments. The police were falsely implicating the petitioner in all the undetected cases consequent on his arrest on 27-5-1998. Considering the length of sentence imposed on the revision petitioner in all the cases taken together this is a fit case for giving him the benefit under Sec. 427 Cr.P.C.

7. I am afraid that I cannot agree with the above submissions. It is true that P.W.1 has not lodged any complaint before the police alleging loss of gold ornaments, lockets etc. worth Rs. 3150/-. It has been judicially noticed that people very often do not take the trouble of going to the police station for lodging a complaint of theft presumably knowing the harassment involved. See **State of Kerala v. Mohana – 1987 (2) KLT 64 and State of Bihar & Anr. v. Sh. P.P. Sharma & Another – 1991 (2) Crime 113 S.C.** Hence, merely because P.W.1 failed to lodge a complaint it does not follow that the case of the prosecution is false.

8. It is also true that P.W.2 the jewellery owner admitted that there are no entries in the bill book and register maintained by him to show that he had purchased MOs 1 and 2 gold ornaments from the accused. It is common experience that jewellery owners accept ornaments from certain dubious customers knowing that those ornaments are stolen properties. When such clandestine sale takes place, no sensible businessman will record the same in his ledger or other books of accounts. Hence, the said testimony of P.W.2 does not in any way cause any dent to the prosecution evidence. The trial Magistrate who had the unique advantage of seeing the witnesses and assessing their credibility has chosen to believe the prosecution witnesses to enter the conviction recorded against the petitioner. The lower appellate court has also confirmed the said conviction. In the absence of any infirmity in the appreciation of evidence by the courts below, this court

sitting in revision will be loathe to interfere with the conviction recorded by the courts below . The conviction is accordingly confirmed.

9. Now coming to the question of adequacy or otherwise of the sentence imposed on the revision petitioner, the facts of the case reveal that the theft was committed in respect of only two items of gold ornaments. Considering the fact that the revision petitioner is aged 59 years and the further fact that the sentences imposed on him remaining cases will prolong the jail term till 2016, I am inclined to reduce the sentence imposed on the revision to rigorous imprisonment for one year in the present case . Accordingly, for his conviction under Sec. 464 and 451 the sentence imposed on the revision petitioner shall be rigorous imprisonment for one year each and the same shall run concurrently. I am however, not inclined to give the benefit of Sec. 427 Cr.P.C. to the petitioner whose sentence in the individual cases against him is on the basis of the independent sentences imposed on him in those cases.

In the result, this revision is partly allowed confirming the conviction but reducing the sentence of imprisonment to one year instead of two years.

V. Ramkumar , Judge.

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